



**CONTRACT NUMBER
DE-AC52-03NA99205**

**WITH THE
STOLLER-NAVARRO JOINT VENTURE TEAM**

ISSUING OFFICE:

**NATIONAL NUCLEAR SECURITY
ADMINISTRATION**

**SERVICE CENTER
ACQUISITION & FINANCIAL ASSISTANCE
DEPARTMENT**

**P.O. BOX 98518
LAS VEGAS, NV 89193-8518**

ARCHITECT-ENGINEER CONTRACT		1. CONTRACT NO. DE-AC52-03NA99205										
		2. DATE OF CONTRACT October 1, 2003										
3a. NAME OF ARCHITECT-ENGINEER Stoller-Navarro Joint Venture		3b. TELEPHONE NO. (Include Area Code) (702) 295-1856										
3c. ADDRESS OF ARCHITECT-ENGINEER (Include ZIP Code) Stoller-Navarro Joint Venture 7710 W. Cheyenne Ave Las Vegas, NV 89129												
4. DEPARTMENT OR AGENCY AND ADDRESS (Include ZIP Code) Department of Energy National Nuclear Security Administration Nevada Site Office (NSO) P.O. Box 98518 Las Vegas, NV 89193-8518												
5. PROJECT TITLE AND LOCATION Environmental Engineering Services to be accomplished at the Nevada Test Site (NTS) and other off-site locations in the state of Nevada, Alaska, Colorado, Mississippi, and New Mexico.												
6. CONTRACT FOR (General description of services to be provided) This letter contract is for the continuation of environmental engineering services for the National Nuclear Security Administration Nevada Site Office Assistant Manager for Environmental Services. The clauses required for a letter contract are located at Section I.7, 8, 9, and 10 (clauses 52.216-23, 52.216-24, 52.216-25, and 52.216-26 respectively). The proposed definitization schedule is contained in Clause I.9, entitled, Contract Definitization. Refer to Clause I.10 for payment provision under the letter contract. EXECUTED COPY												
7. CONTRACT AMOUNT (Express in words and figures) In accordance with Clause I.8, the limitation of Government liability is not to exceed \$9,668,765.00. Nine Million, Six hundred sixty eight thousand, seven hundred sixty five dollars.												
8. NEGOTIATION AUTHORITY Public Law 92-582 (Brooks Act)												
9. ADMINISTRATIVE, APPROPRIATION, AND ACCOUNTING DATA <table> <tr> <td>89X0240</td> <td>4007</td> <td>\$ 200,000</td> <td>251</td> <td>cc: 0000</td> </tr> <tr> <td>89X0242</td> <td>EW02E1080</td> <td>\$2,177,127</td> <td>251</td> <td>NV400 4001</td> </tr> </table>			89X0240	4007	\$ 200,000	251	cc: 0000	89X0242	EW02E1080	\$2,177,127	251	NV400 4001
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89X0242	EW02E1080	\$2,177,127	251	NV400 4001								

10. The United States of America (called the Government) represented by the Contracting Officer executing this contract, and the Architect-Engineer agree to perform this contract in strict accordance with the clauses and the documents identified as follows, all of which are made part of this contract:

1. Part I, Sections A through H as follows:

Section A - Architect-Engineer Contract

- B - Supplies or Services and Prices/Costs
- C - Description/Specifications/Work Statement
- D - Packaging and Marking
- E - Inspection and Acceptance
- F - Deliveries or Performance
- G - Contract Administration Data
- H - Special Contract Requirements

2. Part II, Section I, Contract Clauses

3. Part III, Section J, List of Documents, Exhibits and Other Attachments

If the parties to this contract are comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.
The parties hereto have executed this contract as of the date recorded in Item 2.

SIGNATURES		NAMES AND TITLES (Typed)
11. ARCHITECT-ENGINEER OR OTHER PROFESSIONAL SERVICES CONTRACTOR		
A	Privacy Act	Susana Navarro-Valenti ^{SNJV Board Member}
B	Privacy Act	Sharon D. Brady, SNJV Board Member
C		
D		
12. THE UNITED STATES OF AMERICA		
	Privacy Act	Darby A. Dieterich, Contracting Officer

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 Items Being Acquired

- (a) The Contractor shall furnish, in accordance with the terms of this contract, all personnel, materials, supplies, services, equipment, facilities and transportation (except as may be expressly set forth in this Contract as furnished by the Government or its other prime contractors) and otherwise do all things necessary to perform the work as described in the Section J, Attachment J.1, Statement of Work (SOW). The major activities that will be priced out under this contract are as follows:
- (1) Provide the necessary services to accomplish all contract objectives and requirements cited in Section C, Clause C.1, in accordance with approved task orders.
 - (2) Provide deliverables in accordance with the Reporting Requirements Checklist, Section J, Attachment J.3, Reporting Requirements.

[End of Clause]

B.2. Level Of Effort (LOE) Direct Productive Labor Hours (DPLH) Required

- (a) The Contractor shall provide an estimated total of 1,178,802 directive productive labor hours (DPLH) over a 2-year period of performance commencing with the effective date of the contract. The DPLH are defined as actual hours worked exclusive of vacation, holidays, sick leave, and other absences. The DPLH are inclusive of clerical and administrative, overtime, plus all subcontract and consultant support.
- (b) The contractor agrees to promptly enter into negotiations for any adjustment in DPLH . Any contract modification resulting from such negotiations may provide for equitable adjustments in the total estimated DPLH, estimated cost, and fee. Equitable adjustments resulting from implementation of this clause shall be made to any affected contract clause in accordance with the provisions of the FAR Clause entitled, Changes.
- (c) Notwithstanding the above, there shall be no adjustment in award fee and incentive fee, as applicable, if the LOE is within 15 percent of the estimated DPLH.

B.3 Estimated Cost, Award Fee, and Incentive Fee

- (a) Pursuant to the Clause 52.216-7, entitled Allowable Cost and Payment, the total estimated cost of this contract is \$ 81,145,419.00.
- (b) The award fee for this contract is \$ 2,434,362.00.
- (c) The incentive fee for this contract is \$ 3,651,544.00 .
- (d) The award fee for this contract shall be awarded upon the unilateral determination of the Fee Determination Official that an award fee has been earned. The unilateral decision is made solely at the discretion of the Government. This determination shall be based upon the Fee Determination Official's evaluation of the contractor's performance, as measured against the evaluation criterion set forth in the Award Fee section of the Performance-Based Fee Plan. Award Fee available for each period is as set forth in the Performance-Based Fee Plan
- (e) The incentive fee for this contract shall be awarded upon successful completion of discrete incentives as specified in the Performance-Based Fee Plan. The unilateral decision is made solely

at the discretion of the Government. This determination shall be based upon the evaluation of the contractor's performance, as measured against the evaluation criteria set forth in the Incentive Fee Plan. Incentive Fee available for each period is as set forth in the Performance-Based Fee Plan.

- (f) Pursuant to FAR Clause 52.232-22, entitled, Limitation of Funds (APR 1984), the amount presently obligated under the Contract is **\$9,127,127.00**. It is estimated that this amount is sufficient to cover performance through January 31, 2004.

[End of Clause]

B.4 Options To Extend The Term Of The Contract - - Services

- (a) The Government may unilaterally extend the term of the contract by written notice to the Contractor within the term of the contract; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option provision.
- (c) The total duration of the contract, including the exercise of any options under this clause, shall not exceed five (5) years unless circumstances require additional extension period(s).
- (d) Should the Government exercise any option hereunder all contractual terms and conditions shall apply during the option(s) period. Further the Contractor agrees that performance under said renewal(s) shall be accomplished within the following estimated cost and award fee.

(1) Base Period: 10/01/2003 - 09/30/2005

a. Option Term:	24 months
b. DPLH:	1,178,802
c. Estimated Cost:	<u>\$ 81,145,419.00</u>
d. Award Fee:	<u>\$ 2,434,362.00</u>
e. Incentive Fee:	<u>\$ 3,651,544.00</u>

(2) First Option Period: 10/01/2005 - 09/30/2006

f. Option Term:	12 months
g. DPLH:	563,954
h. Estimated Cost:	<u>\$ 40,799,364.00</u>
i. Award Fee:	<u>\$ 1,223,981.00</u>
j. Incentive Fee:	<u>\$ 1,835,971.00</u>

(3) Second Option Period: 10/01/2006 - 09/30/2007

k. Option Term:	12 months
l. DPLH:	492,708
m. Estimated Cost:	<u>\$ 37,868,301.00</u>
n. Award Fee:	<u>\$ 1,136,049.00</u>
o. Incentive Fee:	<u>\$ 1,704,074.00</u>

(4) Third Option Period: 10/01/2007 - 09/30/2008

p. Option Term:	12 months
q. DPLH:	406,290
r. Estimated Cost:	<u>\$ 31,885,234.00</u>
s. Award Fee:	<u>\$ 956,557.00</u>
t. Incentive Fee	<u>\$ 1,434,836.00</u>

[End of Clause]

PART I

SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 Statement Of Work (SOW)

The SOW is listed in Part III, Section J, Attachment J.1

[End of Clause]

C.2 Reports (JUL 2001)

(a) Reports shall be in accordance with the "Reporting Requirements Checklist," as listed in Part III, Section J., Attachment J.3.

(b) Reports shall be accomplished within the total contract amount. If costs exceed the total contract amount, those additional costs to complete the reports shall be assumed by the contractor.

[End of Clause]

SECTION D

PACKAGING AND MARKING

D.1 Packaging (JUL 2001)

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practices and adequate to ensure acceptance by common carrier and provide safe transportation at the most economical rate(s).

[End of Clause]

D.2 Marking (JUL 2001)

- (a) Each package, report, or other deliverable product shall be accompanied by a letter or other document which:
 - (1) Identifies the contract by number under which the item is being delivered.
 - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
 - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, the Contracting Officer.

[End of Clause]

SECTION E**INSPECTION AND ACCEPTANCE****E.1 FAR 52.246-5 Inspection of Services—Cost Reimbursement (April 1984)**

- (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may-
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may-
 - (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
 - (2) Terminate the contract for default.

E.2 Inspection And Acceptance (JUL 2001)

- (a) Inspection of all items under this contract shall be accomplished by the NNSA Contracting Officer (CO), or any other duly-authorized Government representative identified by separate letter.
- (b) Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated representative, as designated in writing by the Contracting Officer.

[End of Clause]

SECTION F

DELIVERIES OR PERFORMANCE

F.1 52.252-2 Clauses Incorporated By Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

None in this Section.

F.2 Period of Performance (JUL 2001)

The period of performance of this contract shall be as follows:

a. Base Period

The base period of performance of 24 months and shall be from October 1, 2003, through September 30, 2005.

b. First Option Year

The period of performance on this contract shall be extended through September 30, 2006, if this option is exercised.

c. Second Option Year

The period of performance on this contract shall be extended through September 30, 2007, if this option is exercised.

d. Third Option Year

The period of performance on this contract shall be extended through September 30, 2008, if this option is exercised.

[End of Clause]

F.3 Principal Place of Performance

The principal places of performance of this contract shall be the city of Las Vegas, the Nevada Test Site, and other locations specified in the SOW.

[End of Clause]

F.4 Deliveries

All products, reports, or services under this contract shall be delivered to the Contracting Officer shown in Section G, Clause G.3, Contract Administration, or any other duly authorized Government representative,

as designated in writing by the Contracting Officer. Contractor shall prepare and submit the plans and reports listed in Section J, Attachment J.3, Reporting Requirements.

[End of Clause]

F.5 FAR 52.242-15 Stop-Work Order (Aug 1989) - Alt 1 (Apr 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if-
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

[End of Clause]

SECTION G
CONTRACT ADMINISTRATION DATA

G.1 Correspondence Procedures and Contract Administration

- (a) To promote timely and effective administration, correspondence submitted under this contract shall include the contract number and shall be subject to the following procedures:

- (1) **Technical Correspondence:** Technical correspondence shall be addressed to the NNSA Contracting Officer's Representative (COR) with an information copy addressed to the NNSA Contracting Officer (used herein excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of this contract).
- (2) **Other Correspondence:** All other correspondence shall be addressed to the NNSA Contracting Officer with information copies of the correspondence to the contract specialist, the COR, and the DOE Patent Counsel (where patent or technical data issues are involved).

- (3) The Nevada Site Office address is:

NNSA Nevada Site Office
Office of Business Affairs
P.O. Box 98518
Las Vegas, NV 89193-8518

- (4) **Subject Line(s).** All correspondence shall contain a subject line commencing with the contract number, DE-AC52-03NA99205, contractor's name, and the topic.

- (b) The Contracting Officer correspondence address is:

National Nuclear Security Administration (NNSA)
Nevada Site Office (NSO)
Office of Business Affairs
P.O. Box 98518
Las Vegas, NV 89193-8518

- (c) The NSO Contract Specialist correspondence address is:

Darby A. Dieterich
Nevada Site Office
Office of Business Affairs
P.O. Box 98518
Las Vegas, NV 89193-8518
(702) 295-1560 (Phone)
(702) 657-7575 (Fax)

- (d) The NSO Contracting Officer Representative correspondence address is:

TBD
Nevada Site Office
Environmental Restoration Division
P.O. Box 98518
Las Vegas, NV 89193-8518

- (e) The Contractor will be notified in writing of the name and correspondence address of the Contracting Officer's Representative (COR) who is the only individual, other than the Contracting Officer, that may give technical direction.

- (f) The Contracting Officer has delegated certain duties and responsibilities associated with the government-furnished property and/or contractor-acquired property administration under this contract to the Property Administrator. Their address and telephone number are as follows:

Angela Tommasino, Property Administrator
NNSA Service Center
Property and M&O Contract Support Department
P.O. Box 98518
Las Vegas, NV 89193-8518
Telephone: (702) 295-1064

- (g) The mailing address for the coordination and routing of information going to the DOE Patent Counsel Office is:

NNSA Nevada Site Office
Office of Chief Counsel
P.O. Box 98518
Las Vegas, NV 89193-8518

- (h) Direction for performance of this contract will be issued in accordance with Section I, Clause I.33, Technical Direction, and Section H, Clause H.1, Ordering Procedures.

[End of Clause]

G.2 Billing Instructions

- (a) The instructions set forth in Section J, Attachment J.2, are provided for the use by the contractor in the preparation and submission of vouchers requesting reimbursement for work performed on negotiated cost-type contracts. The submission of complete vouchers will reduce correspondence and other causes for delay to a minimum and will assure prompt payment to the contractor.
- (b) In requesting reimbursement, contractors shall use the Government voucher Standard Form (SF) 1034, Public Voucher for Purchases and Services Other Than Personal. The Standard Form 1034 may be accessed at <http://procure.msfc.nasa.gov/msfc/forms/forms.html>. A certified summary sheet, shall accompany the SF 1034. A sample SF 1034 and certified summary sheet are provided at Section J, Attachment J.2.

[End of Clause]

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 Ordering Procedures

Performance under this contract shall be subject to the following ordering procedure:

- (a) The Contractor shall incur cost under this contract only in the performance of the fiscal year Task Order and revisions to the Task Order issued in accordance with this clause. No other costs are authorized without the express written consent of the Contracting Officer.
- (b) The fiscal year Task Order will direct the Contractor to accomplish work within scope. It shall include DPLH and the total estimated cost, award fee, and incentive fee for the completion of the Task Order.
- (c) The Contracting Officer must approve the fiscal year Task Order prior to the Contractor incurring any costs.
- (d) Individual fiscal year Task Agreement Plans (Plans) that support the Task Order will be prepared by the Contractor based on direction provided by NNSA Project Managers. Plans will contain specific work scope, cost, and schedule. These Plans may be modified throughout the government fiscal year to reflect changes in NNSA's programmatic priorities. Initial Plans, as well as any modifications thereto, will be accomplished through the established change control process. They will be approved by the Contracting Officer at the beginning of the Government's fiscal year.
- (e) If at any time, during the Government's fiscal year, Plans cumulatively will exceed the DPLH and total estimated cost threshold in the Task Order, a revision to the Task Order may be required. This revision must be submitted by the Contractor to the Contracting Officer for approval.

[End of Clause]

H.2 Total Available Fee, Performance - Based Fee Plan

- (a) Total available fee, consisting of an award fee component for subjective performance requirements and an incentive fee component for objective performance requirements, determined in accordance with the provisions of this clause, is available for payment in accordance with the Performance-Based Fee Plan (PBFP) described in subparagraph (c) of this clause.
 - (1) The award fee for this contract shall be awarded upon the unilateral determination of the Fee Determination Official that an award fee has been earned. The unilateral decision is made solely at the discretion of the Government. This determination shall be based upon the Fee Determination Official's evaluation of the contractor's performance, as measured against the evaluation criteria set forth in the Award Fee section of the Performance-Based Fee Plan. Award Fee available for each period is as set forth in the Performance-Based Fee Plan.
 - (2) The incentive fee for this contract shall be awarded upon successful completion of discrete incentives as specified in the Performance-Based Fee Plan. The unilateral decision is made solely at the discretion of the Government. This determination shall be based upon the evaluation of the contractor's performance, as measured against the evaluation criteria set forth in the Incentive Fee Plan. Incentive Fee available for each period is as set forth in the Performance-Based Fee Plan.

(b) **Annual Total Available Fee.**

- (1) **Fee Negotiations.** Prior to the beginning of each fiscal year (October 1) under this contract, or other appropriate evaluation period as mutually agreed upon, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or other appropriate period, including the evaluation areas and individual requirements subject to incentives and the total available fee. The fee to be negotiated must be based on costs that have not already been incurred. The contract shall be modified at the conclusion of each negotiation to reflect the negotiated requirements. In the event the parties fail to agree on the requirements, the evaluation areas, individual requirements subject to incentives, or the total available fee, 30 days prior to the start date of the performance period, a unilateral determination may be made by the contracting officer.
- (2) The fee pool will be split between Award Fee and Incentive Fee over the life of the contract as follows:

<u>Base Contract - Year 1</u>	40% \$1,220,016.00	60% \$1,830,024.00	\$3,050,040.00
<u>Base Contract - Year 2</u>	40% \$1,214,346.00	60% \$1,821,520.00	\$3,035,866.00
<u>Option Year 1</u>	30% \$1,223,981.00	70% \$1,835,971.00	\$3,059,952.00
<u>Option Year 2</u>	30% \$1,136,049.00	70% 1,704,074.00	\$2,840,123.00
<u>Option Year 3</u>	30% \$ 956,557.00	70% \$1,434,836.00	\$2,391,393.00

(c) **Performance Based Fee Plan (PBFP).** To the extent not set forth elsewhere in the contract:

- (1) The Government shall establish a PBFP upon which the determination of the total available fee amount earned shall be based. The PBFP will address all of the requirements of contract performance specified in the contract directly or by reference. The PBFP will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. The Plan shall also set forth the amount by which the total available fee amount that will be allocated between award and incentive fee and the methodology for determining the amount of fee earned. A copy of the PBFP shall be provided to the Contractor:
 - (A) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties, or
 - (B) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.

(d) **Contractor self-assessment.**

Award Fee. Following each award fee evaluation period, the Contractor shall submit a self-assessment within 5 working days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The NSO D/AMEM, or designee, will review the Contractor's self-assessment as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the determination of award fee.

(e) **Total Fee Amount Earned:**

(1) **Award Fee:**

- (A) The evaluations made for the determination of award fee shall be conducted semiannually. The Government shall, at the conclusion of each specified award fee evaluation period, evaluate the Contractor's performance on all requirements and determine, in accordance with the PBFP, the total award fee amount earned. The Nevada Site Office, Deputy Assistant Manager for Environmental Management (D/AMEM), or designee, will be the Fee Determination Official (FDO). The Contractor agrees that the determination as to the total available Award Fee earned is a unilateral FDO determination. The FDO determination is final and not subject to the term of the clause entitled "Disputes or any other appeal clauses. Provisional payment of award fee is authorized in accordance with the clause entitled "Provisional Payment of Award Fee".
- (B) The FDO shall issue the final total available award fee amount earned determinations in accordance with the Performance-Based Fee Plan. The final award fee determinations must be made within 30 calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment or 40 calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined maximum available fee amount earned.

(2) **Incentive Fee:**

- (A) The evaluations made for the determination of incentive fee shall be accomplished by the COR upon receipt of the Contractor's "Request for Payment of Performance-Based Incentive." Payment of fee earned for performance based incentives will occur upon Contracting Officer receipt of the "Performance-Based Incentive Validation Form" from the COR and an invoice requesting payment from the Contractor. This request must include the supporting documentation (cost, schedule, etc.) applicable to the accomplishment of the incentive.
 - (B) An incentive fee determination must be made by the Contracting Officer within 30 calendar days after the receipt by the Contracting Officer of the Contractor's Request for Payment of Performance Based Incentive for each discrete milestone incentive. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned.
- (f) **Contract Modifications.** The contract will be modified unilaterally by the Contracting Officer on a semi-annual basis after the award fee determination has been made. This modification will also include incentive fee earned to that time. The contract modification shall address the amount of award fee and incentive fee earned for the performance period evaluation. Upon receipt of the contract modification, the total award fee earned minus any fee already paid may be paid to the Contractor upon receipt of an invoice that reflects the amount of the balance of the award fee for the evaluation period. The total incentive fee earned may be paid to the Contractor upon receipt of an invoice that reflects the amount of award fee stipulated in the modification.

(End of Clause)

H.3 PROVISIONAL PAYMENT OF AWARD FEE

- (a) Interim equal payments of up to 80% of the available award fee may be authorized by the Contracting Officer. If authorized, such payments shall be provisional pending formal determination of award fees by the Fee Determination Official (FDO). The contractor is authorized a provisional award fee of 1/12th of 80% which is payable at the end of each month during the period of evaluation pending the final determination of award fee.
- (b) In the event the final FDO determined award fee is less than provisional fee payments, the Contractor shall reimburse such overpayment to the Government, with interest in accordance with the Clause entitled "Interest," upon demand by the Contracting Officer.

End of Clause]

H.4 Incorporation Of Representations, Certifications, And Other Statements Of Offeror (JUL 2001)

The Representations, Certifications, and Other Statements of Offeror, contained in Section K of the solicitation, completed by the contractor and dated February 14, 2003, are hereby incorporated by reference.

[End of Clause]

H.5 Modification Authority

- (a) As stated above and notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government authorized to:
 - (1) Accept non-conforming work;
 - (2) Waive any requirement of this contract; or
 - (3) Modify any term or condition of this contract.

[End of Clause]

H.6 Contractor's Program Manager (JUL 2001)

- (a) The Contractor shall designate a Program Manager who will be the authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall provide the single point of contact between the contractor and the Contracting Officer's Representative(s) under this contract. All administrative support for technical personnel required to fulfill the work stated in the contract shall be the responsibility of the contractor.
- (b) The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the NNSA Contracting Officer's Representative(s) may issue within the terms and conditions of the contract.
- (c) The Contractor shall designate a Business Manager who will be responsible for all administrative support for technical personnel required to fulfill the work stated in the contract. The Business Manager will be a single point of contact for administrative matters relating to this contract between the Contractor and NNSA/NSO

[End of Clause]

H.7 Release Of Information (JUL 2001)

Any proposed public release of information including publications, exhibits, or audiovisual productions

pertaining to the effort/items called for in this contract shall be submitted for approval prior to actual printing and distribution. Approval authority is NNSA Headquarters Congressional Intergovernmental and Public Affairs (NA-3.5), Washington, DC. Proposed releases are to be submitted to the NSO Office of Public Affairs, P.O. Box 98518, Las Vegas, NV,.

[End of Clause]

H.8 Government-Furnished Facilities And Services (JUL 2001)

- (a) During contract performance, the Government will furnish the contractor office space for approximately 164 individuals on an as-required basis. Additional office space may be provided by the Government as the NNSA project demands. When government-provided space is not available at or near the work and/or training site, and the task requires on-site performance, suitable space may be rented by the contractor with prior approval of the Contracting Officer.
- (b) On-site utilities and office furnishings, standard manuals, supplies, and access to the Nevada Site Office computer systems may be furnished by the Government on an as-required basis. The Government may also provide all telephone and janitorial services, and on-site mail service for the on-site facilities during contract performance. "On-site" is defined as a Government specified location on/or at a Government facility.

[End of Clause]

H.9 Government-Furnished Property (JUL 2001)

- (a) In accordance with FAR 52.245-5 as supplemented by DEAR 952.245-5, the property listed in Section J, Attachment J.5, is hereby provided for use in the performance of this contract.
- (b) Reporting Requirements.
 - (1) The reports required in accordance with the clause referenced above, shall be submitted on DOE Form 4300.3.
 - (2) The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not it is listed herein.
- (c) Low Dollar Value Limitation. Except as otherwise authorized by the Contracting Officer in writing and notwithstanding the contract clause identified in paragraph (a) above, the contractor is not authorized to acquire as a direct charge item under this contract any facilities, equipment (including office equipment), furniture, fixtures or other real or personal property items having a unit acquisition cost of one thousand dollars (\$1,000) or more. The contractor may request authorization for such acquisitions from the Contracting Officer. Any request for authorization shall include an analysis of the most economical method of acquisition.

[End of Clause]

H.10 Lobbying Restriction (Energy & Water Development Appropriations Act, 2003)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

[End of Clause]

H.11 Notice Regarding The Purchase Of American-Made Equipment and Products - Sense Of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products

purchased with funds made available under this award should be American-Made.

[End of Notice]

H.12 Stop-Work and Shutdown Authorization

- (a) **Imminent Health and Safety Hazard.** This is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/ hazardous chemicals. Imminent Danger in relation to the Facility Safety Envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Nuclear Criticality, (2) Radiation Exposure, (3) Fire/Explosion, and/or (4) Toxic Hazardous Chemical Exposure.
- (b) **Stop Work.** In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/ implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect NNSA facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the NNSA and Contractor management. The suspension or stop work order should be promptly confirmed in writing from the Contracting Officer.
- (c) **Shutdown.** In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and safety personnel over-viewing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the NSO Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to clause F.5.
- (d) **Facility Representatives.** NSO personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to "stop work," which applies to the shutdown of an entire plant, activity, or job. This stop work authority will be used for an operation of a facility which is performing work the FR believes:
 - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

[End of Clause]

H.13 Responsible Corporate Official

The Contractor shall provide a Guarantee of performance from its parent company. # Since the Contractor is a joint venture or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall all provide Guarantees, which Guarantees shall provide for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this clause, the Government may contact, as necessary, the

single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change in the individual to contact.

Name: Jim Moran
Position: Chairman of the Board, Stoller-Navarro Joint Venture
Company: Stoller-Navarro Joint Venture
Address: 990 S. Public Road, Suite A
Lafayette, CO 80026
Phone: (970) 210-8080
Email: jmoran@stoller.com

[End of Clause]

H.14 Observance Of Legal Holidays

- (a) The government hereby provides notice and the contractor hereby acknowledges receipt that federal personnel observe the following days as holidays.
 - 1. New Year's Day
 - 2. Martin Luther King Day
 - 3. President's Day
 - 4. Memorial Day
 - 5. Independence Day
 - 6. Labor Day
 - 7. Columbus Day
 - 8. Veterans' Day
 - 9. Thanksgiving Day
 - 10. Christmas Day
- (b) Additionally, the contractor will observe, along with federal personnel, any other day designated by federal statutes; Executive Order; or Presidential proclamation.
- (c) The contractor shall conform to these holidays observed by the government and agrees to continue to provide sufficient personnel to perform scheduled critical tasks and shall be guided by the instructions issued by the Contracting Officer.

[End of Clause]

H.15 Direct-Billed Training

- (a) In performance of the SOW in this contract, the Contractor shall use fully trained, experienced, and technically proficient personnel. All training of personnel must be relevant to the skills required in the performance of the requirements in the contract. No reimbursement will be made by the NSO for training of Contractor employees in the following situations:
 - (1) Training required to enable an employee to meet minimum skill level requirements;
 - (2) Training for a course of instruction that is normally experienced or regularly offered for the skill; and
 - (3) Training that is not pertinent or relevant to an employee's occupation or skills.
- (b) For courses of instruction that are peculiar to either the NSO's equipment systems, operations, programs, or procedures, reimbursement will be made by the NSO. An Annual Training Plan for the Contractor will be reviewed by the COR and approved by the CO. Any training not included in the Annual Training Plan will require concurrence by the COR and approval by the CO on a case-by-case basis. In order to be reimbursed for any training, prior approval must be obtained.
 - (1) The request for concurrence must list as a minimum:
 - (A) Employee name;
 - (B) Position and title;
 - (C) Course title, location, and duration;
 - (D) Reason for attendance; and

- (E) Total itemized cost for attendance to include travel, per diem, registration, course materials, salary costs, etc.
- (c) When training costs have been reimbursed to the Contractor and the employee receiving the training resigns within 12 months of training completion or is reassigned within this period, the Contractor shall be required to refund or credit such reimbursed training costs to the Government. The cost will include all itemized costs in para b.1(e) above.
- (d) Training Records. For all training sponsored by and reimbursed by NSO, the Contractor will maintain records that will be made available to the Government upon request. Those records will consist of the formal concurrence request and copies of the certification of course completion.

[End of Clause]

H.16 Advance Cost Understandings

- (a) The NSO reserves the right to negotiate and insert in the contract of the successful offeror any or all of the following advance cost understandings, and others as appropriate.
- (b) Transportation Costs. Bus transportation to and from the Nevada Test Site (NTS) will be made available to Contractor employees at the prevailing rate for employees required to travel to the NTS. The cost of this transportation is an allowable cost under the contract.

[End of Clause]

H.17 Ownership Of Records

- (a) Government's Records.

- (1) Except as is provided in paragraph (b) of this clause and as may be otherwise agreed upon by the government and the contractor, all records (including computer databases and software) acquired or generated by the contractor in its performance of this contract shall be the property of the government and shall be delivered to the government or otherwise disposed of by the contractor, either as the CO may from time to time direct during the progress of the work or, in any event, as the CO shall direct upon settlement of this contract. The contractor shall, subject to DOE and NNSA security regulations, requirements, and other provisions of the contract, have the right to inspect, and at its own expense, duplicate only those processes, procedures, or records delivered, or to be delivered, to the government by the contractor under this contract, or retain duplicates which are in excess of the government's requirements. However, nothing in this paragraph shall:

- (A) permit the contractor to duplicate or retain for its own purposes any official government documents or proprietary information relating to the government or to other contractors;
- (B) constitute any commitment on the part of the government to retain such records for any period beyond NSO's customary retention periods for the various types of records, and
- (C) have any effect on the provisions of I.1 Clause 52.227-14, entitled "Rights in Data - General."

- (b) Contractor's Own Records.

- (1) The following records are considered the property of the contractor and not within the scope of paragraph (a) above:
 - (A) personnel records and files maintained on individual employees, applicants, and former employees;
 - (B) privileged or confidential contractor financial information and correspondence between segments of the contractor's organization; and

(C) Internal legal files.

(c) Inspection and Audit of Records.

All records acquired, or generated by the contractor under this contract, and in the possession of the contractor, including those described in paragraph (b) above (exclusive of subparagraph (b)(1)(b) and (b)(1)(c)), shall be subject to inspection and audit by NNSA at all reasonable times. The contractor shall afford the proper NNSA facilities for such inspection and audit.

(d) Contractor Records Disposition.

In the event of completion or termination of this contract, copies of any such Contractor's own records shall be delivered to NNSA or its designees. Title to such records shall vest in the NSO upon delivery.

[End of Clause]

H.18 Automated Data Processing Equipment (ADPE) Plan (APR 1984)

Requirements for ADPE which were not specifically included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer (CO). An Annual ADPE Purchase Plan for the Contractor will be submitted for review and approval by the Contracting Officer. Any ADPE item not included on the Annual ADPE Purchase Plan will require concurrence by the Contracting Officer Representative (COR) and approval by the CO on a case-by-case basis. In order to be reimbursed for any ADPE purchases, prior approval must be obtained. Whenever CO written consent is required, the Contractor will furnish justification to the CO concerning the need for and selection of the ADPE, the specific make(s), model(s) numbers, and the determination for leasing versus purchasing.

[End of Clause]

H.19 Automated Data Processing Equipment Leasing (APR 1984)

- (a) If the Contractor leases ADPE equipment for use under this contract, the contractor shall include a provision in the rental contract stating that the Government shall have the unilateral right to exercise any purchase option under the rental contract between the Contractor and the ADPE rental vendor and to realize any other benefits earned through rental payments.
- (b) The Contractor shall furnish a copy of the rental contract to the CO.

[End of Clause]

H.20 Price-Anderson Amendments Act (PAAA) Non-Compliance

The Contractor shall establish an internal PAAA noncompliance identification, tracking and corrective action system and shall provide access to and fully support DOE and NNSA reviews of the system. The Contractor shall also implement a PAAA reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to the PAAA requirements.

[End of Clause]

PART II - CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://www.arnet.gov/far>

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203-3	APR 1984	GRATUITIES
52.203-5	APR 1984	COVENANT AGAINST CONTINGENT FEES
52.203-6	JUL 1995	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	JUL 1995	ANTI-KICKBACK PROCEDURES
52.203-10	JAN 1997	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	JUN 1997	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-4	AUG 2000	PRINTED OR COPIED DOUBLED-SIDED ON RECYCLED PAPER
52.209-6	JUL 1995	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.215-2	JUN 1999	AUDIT AND RECORDS--NEGOTIATION
52.215-8	OCT 1997	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT
52.215-10	OCT 1997	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
52.215-11	OCT 1997	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS
52.215-12	OCT 1997	SUBCONTRACTOR COST OR PRICING DATA
52.215-13	OCT 1997	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS
52.215-15	DEC 1998	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-16	OCT 1997	FACILITIES CAPITAL COST OF MONEY
52.215-18	OCT 1997	REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS
52.219-8	OCT 2000	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	JAN 2002	SMALL BUSINESS SUBCONTRACTING PLAN Alternate II (OCT 2001)

52.219-16	JAN 2002	LIQUIDATED DAMAGES--SUBCONTRACTING PLAN
52.222-1	FEB 1997	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	AUG 1996	CONVICT LABOR
52.222-20	DEC 1996	WALSH-HEALEY PUBLIC CONTRACTS ACT
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	APR 2002	EQUAL OPPORTUNITY
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	DEC 2001	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.223-5	APR 1998	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION
52.223-6	MAY 2001	DRUG-FREE WORKPLACE
52.223-13	OCT 2000	CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING
52.223-14	AUG 2003	TOXIC CHEMICAL RELEASE REPORTING
52.225-13	JUL 2000	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.225-16	FEB 2000	SANCTIONED EUROPEAN UNION COUNTRY SERVICES
52.227-1	JUL 1995	AUTHORIZATION AND CONSENT
52.227-2	AUG 1996	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-3	APR 1984	PATENT INDEMNITY
52.227-13	SEP 1997	PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT
52.227-16	JUN 1987	ADDITIONAL DATA REQUIREMENTS
52.227-17	JUN 1987	RIGHTS IN DATA - SPECIAL WORKS
52.229-10	APR 2003	STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX
52.230-2	APR 1998	COST ACCOUNTING STANDARDS
52.230-3	APR 1998	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES
52.230-6	NOV 1999	ADMINISTRATION OF COST ACCOUNTING STANDARDS
52.232-17	JUN 1996	INTEREST
52.232-22	APR 1984	LIMITATION OF FUNDS
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	FEB 2002	PROMPT PAYMENT
52.233-1	DEC 1998	DISPUTES ALTERNATE I (DEC 1991)
52.233-2	AUG 1996	SERVICE OF PROTEST
52.233-3	AUG 1996	PROTEST AFTER AWARD Alternate I (JUN 1985)
52.236-24	APR 1984	WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS
52.237-2	APR 1984	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION

52.242-1	APR 1984	NOTICE OF INTENT TO DISALLOW COSTS
52.242-3	MAY 2001	PENALTIES FOR UNALLOWABLE COSTS
52.242-13	JUL 1995	BANKRUPTCY
52.243-2	AUG 1987	CHANGES - COST REIMBURSEMENT ALTERNATE I (APR 1984)
52.244-2	AUG 1998	SUBCONTRACTS ALTERNATE II (AUG 1998)
52.244-4	AUG 1998	SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
52.244-5	DEC 1996	COMPETITION IN SUBCONTRACTING
52.246-5	APR 1984	INSPECTION OF SERVICES - COST REIMBURSEMENT
52.246-25	FEB 1997	LIMITATION OF LIABILITY - SERVICES
52.247-1	APR 1984	COMMERCIAL BILL OF LADING NOTATIONS
52.247-63	JAN 1997	PREFERENCE FOR U.S.-FLAG AIR CARRIERS
52.247-64	JUN 2000	PREFERENCE FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS
52.249-6	SEP 1996	TERMINATION (COST REIMBURSEMENT)
52.249-14	APR 1984	EXCUSABLE DELAYS
52.251-1	APR 1984	GOVERNMENT SUPPLY SOURCES
52.252-4	APR 1984	ALTERATIONS IN CONTRACT
52.253-1	JAN 1991	COMPUTER GENERATED FORMS
952.208-7	APR 1984	TAGGING OF LEASED VEHICLES
952.219-70	MAY 2000	DOE MENTOR-PROTEGE PROGRAM
952.223-71	DEC 2000	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION
952.223-72	APR 1984	RADIATION PROTECTION AND NUCLEAR CRITICALITY
952.223-75	APR 1984	PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS
952.227-9	FEB 1995	REFUND OF ROYALTIES
952.227-13	SEP 1997	PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT
952.236-71	APR 1994	INSPECTION IN ARCHITECT-ENGINEER CONTRACTS

1.2 52.202-1 Definitions (DEC 2001) Alternate I (MAY 2001) (As Modified by 952.202-1) (MAR 2002)

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means--
 - (1) Any item other than real property, that is of a type customarily used for nongovernmental purposes and that--
 - (i) Has been sold, leased, or licensed to the general public; or

- (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--
 - (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraph (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).
- (e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (f) "Nondevelopmental item" means--
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.
- (g) Deleted
- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission, and "NNSA" means the National Nuclear Security Administration.
- (i) The term Senior Procurement Executive means, for DOE: Department of Energy - Director, Office of Procurement and Assistance Management, DOE; National Nuclear Security Administration - Administrator for Nuclear Security, NNSA; and Federal Energy Regulatory Commission - Chairman, FERC.

[End of Clause]

I.3 52.203-8 Cancellation, Recission, And Recovery Of Funds For Illegal Or Improper Activity (JAN 1997)

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423)(the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which--
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--
 - (a) Exchanging the information covered by such subsections for anything of value; or
 - (b) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct

constituting an offense punishable under subsection 27(e)(1) of the Act.

- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

[End of Clause]

I.4 52.215-19 Notification Of Ownership Changes (OCT 1997)

- (a) The Contractor shall make the following notifications in writing:
 - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Contracting Officer within 30 days.
 - (2) The Contractor shall also notify the Contracting Officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall-
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

[End of clause]

I.5 52.215-21 Requirements For Cost Or Pricing Data Or Information Other Than Cost Or Pricing Data - Modifications (OCT 1997)

- (a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) Information on modifications of contracts or subcontracts for commercial items. (A) If—
 - (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
 - (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.
- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—
- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
 - (4) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.
- (b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
- (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
 - (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

[End of Clause]

I.6 52.216-7 Allowable Cost And Payment (DEC 2002) and Alt II (DEAR 952.216-7)

(a) Invoicing.

- (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulation (DEAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.
- (2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.
- (3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
 - (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--
 - (a) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made--
 - (1) In accordance with the terms and conditions of a subcontract or invoice; and
 - (2) Ordinarily prior to the submission of the Contractor's next payment request to the Government;
 - (b) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
 - (c) Direct labor;
 - (d) Direct travel;
 - (e) Other direct in-house costs; and
 - (f) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
 - (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
 - (1) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless--
 - (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

- (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).
 - (2) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
 - (3) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.
- (d) Final indirect cost rates.
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
 - (2) (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
 - (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
 - (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
 - (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
 - (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
 - (6) (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--
 - (a) Determine the amounts due to the Contractor under the contract; and
 - (b) Record this determination in a unilateral modification to the contract.
 - (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.
- (e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--

- (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be--
 - (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
 - (2) Adjusted for prior overpayments or under payments.
- (h) Final payment.
 - (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--
 - (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
 - (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except--
 - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (b) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
 - (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

[End of Clause]

1.7 52.217-9 Option To Extend The Term Of The Contract (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

[End of Clause]

I.8 52.222-2 Payment for Overtime Premiums (Jul 1990)

- (a) The use of overtime is authorized under this contract if the overtime premium does not exceed \$300,000 or the overtime premium is paid for work-
 - (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to the Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall-
 - (1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
 - (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

[End of clause]

I.9 52.222-35 Affirmative Action For Disabled Veterans And Veterans Of The Vietnam Era (APR 1998) As Modified By DOE HQ Acquisition Letter 99-03 (MAY 1999)

- (a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system," means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam,

the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

- (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$25,000 or more shall also list all employment openings with the appropriate office of the State employment service.
- (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments,

of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability.

- (1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

- (1) The Contractor agrees to post employment notices stating
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

I.10 52.227-14 Rights in Data-General (JUN 1987) with Alt V, DEAR 927.409(a)(1) and Alt VI (DEAR 952.227-14)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data

comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
 - (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
 - (6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
 - (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
 - (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.
- (b) Allocation of rights.
- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in-
 - (i) Data first produced in the performance of this contract;
 - (ii) Form, fit, and function data delivered under this contract;
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
 - (2) The Contractor shall have the right to-
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright--

- (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization,

dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

- (i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
- (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
- (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- (2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

- (3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

- (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on

qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor-

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also

- (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
- (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.
- (i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.
- (j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.
- (k) Contractor Licensing. Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

- (1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;
- (2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;
- (3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or
- (4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

[End of Clause]

I.11 52.227-23 Rights To Proposal Data (Technical) (JUN 1987)

Except for data contained on pages marked proprietary, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated April 30, 2002, upon which this contract is based.

[End of Clause]

I.12 52.232-34 Payment By Electronic Funds Transfer- Other Than Central Contractor Registration (MAY 1999)

- (a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
 - (1) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).
- (b) Mandatory submission of Contractor's EFT information. (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by 10 days after contract award. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).
- (1) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

- (c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.
- (d) Suspension of payment. (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
 - (1) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.
- (e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--
 - (i) Making a correct payment; (ii) Paying any prompt payment penalty due; and (iii) Recovering any erroneously directed funds.
 - (1) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to

designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

- (j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.
- (1) The contract number (or other procurement identification number).
 - (2) The Contractor's name and remittance address, as stated in the contract(s).
 - (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
 - (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
 - (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
 - (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
 - (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

[End of Clause]

I.13 52.232-35 Designation Of Office For Government Receipt Of Electronic Funds Transfer Information (MAY 1999)

- (a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.
- (b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).
- (c) Designated Office:

NNSA Site Office
Office of Business Affairs
P.O. Box 98518
Las Vegas, NV 89193-8518
Phone: (702) 295-1560 Email: dieterich@nv.doe.gov

[End of Clause]

I.14 52.237-3 Continuity Of Services (JAN 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-
 - (1) Furnish phase-in training; and
 - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice,
 - (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and
 - (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

[End of clause]

I.15 52.244-6 Subcontracts For Commercial Items (APR 2003)

- (a) Definitions. As used in this clause--
 - "Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.
 - "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down not required in accordance with

paragraph (d) of FAR clause 52.247-64).

- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

[End of Clause]

I.16 52.245-5 Government Property (Cost Reimbursement, Time And Material, Or Labor-Hour Contracts) (JAN 1986) (As Modified by 952.245-5)

(a) Government-furnished property.

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--
 - (i) All or substantially all of the Contractor's business;
 - (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this contract.
- (2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
- (4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

- (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and

there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

- (1) The Government shall retain title to all Government-furnished property.
- (2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--
 - (i) Issuance of the property for use in contract performance;
 - (ii) Commencement of processing of the property or use in contract performance; or
 - (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.
- (4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property.

The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration.

- (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.
- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5.
- (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access.

The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited risk of loss.

- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or

damage, except as provided in subparagraphs (2) and (3) below.

- (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--

- (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (iii) For which the Contractor is otherwise responsible under the express terms of this contract;
- (iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
- (v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

- (3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
- (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

- (4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

- (5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined

with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

- (7) The Contractor shall not be reimbursed for, and shall not include as an item of over head, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.
- (9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

- (1) Any delay in delivery of Government-furnished property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished property; or
 - (4) Failure to repair or replace Government property for which the Government is responsible.
- (i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in

- accordance with the Contractor's normal practice and account for it as part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.
- (j) Abandonment and restoration of Contractor premises. Unless otherwise provided herein, the Government--
- (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment made under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas contracts. If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

[End of Clause]

I.17 52.252-4 Alterations in Contract (APR 1984)

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered. See the following Clauses:

- (a) I.2, 52.202-1 Definitions (DEC 2001) Alternate I (MAY 2001) (As Modified by 952.202-1)(MAR 2002)
- (b) I.6, 52.216-7, Allowable Cost and Payment (DEC 2002) with Alternate II (DEAR 952-216-7)
- (c) I.13, 52.227-14 Rights in Data-General (JUN 1987) with Alternate V, DEAR 927.409(a)(1) and Alternate VI (DEAR 952.227-14)(FEB 1998)
- (d) I.19, 52.245-5, Government Property (Cost Reimbursement, Time and Material, Or Labor-Hour Contracts (JAN 1986) (As Modified by 952.245-5)

[End of Clause]

I.18 52.252-6 Authorized Deviations In Clauses (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

[End of Clause]

I.19 952.204-2 Security (MAY 2002)

- (a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means:
- (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or
 - (2) Any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).
- (j) Foreign Ownership, Control or Influence.

- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
- (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

[End of Clause]

I.20 952.204-70 Classification/Declassification (SEP 1997)

- (a) In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).
- (b) The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflects decisions made by Federal Government Original Classifiers.
- (c) The contractor or subcontractor shall ensure that any document or material that may contain

classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/ declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

- (d) In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releaseable. Documents which are declassified and determined to be publicly releaseable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.
- (e) The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

[End of Clause]

I.21 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

[End of Clause]

I.22 952.208-70 Printing (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8" by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on NNSA's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[End of Clause]

I.23 952.209-72 Organizational Conflicts Of Interest (JUN 1997) with Alternate I

- (a) Purpose. The purpose of this clause is to ensure that the contractor
- (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and
 - (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
- (1) Use of Contractor's Work Product.
- (I) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of **five years** after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if

the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

- (ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (I) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

- (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
- (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, NNSA may terminate this contract for default.

- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual

(e) **Waiver.** Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

[End of Clause]

(a) The personnel listed below or elsewhere in this contract are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must; (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel. The following is a list of key personnel for this contract:

Program Manager

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations

of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

- (b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

[End of Clause]

I.26 952.226-74 Displaced Employee Hiring Preference (JUN 1997)

- (a) Definition.

"Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

[End of Clause]

I.27 952.227-82 Rights To Proposal Data (APR 1994)

Except for technical data contained in the contractor's proposal dated April 30, 2002, which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

[End of Clause]

I.28 952.231-71 Insurance - Litigation And Claims (APR 2002)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as

directed from time to time by the contracting officer.

- (c) (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
- (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed--
 - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)--
 - (1) Which are otherwise unallowable by law or the provisions of this contract; or
 - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR part 31, as supplemented in 48 CFR part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's--
 - (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting

officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

- (j)
 - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by NNSA under the contract to finance the litigation.
 - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
 - (4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—
 - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Department representatives to collaborate with: in-house or NNSA-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
 - (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

[End of Clause]

I.29 952.236-71 Inspection (APR 1994)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

[End of Clause]

I.30 952.242-70 Technical Direction (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between

work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

- (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.
- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:
- (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
 - (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

[End of Clause]

I. 31 952.247-70 Foreign Travel (DEC 2000)

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

[End of Clause]

I. 32 952.251-70 Contractor Employee Travel Discounts (DEC 2000)

- (a) The contractor shall take advantage of the travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the DOD's Commercial Travel Offices.
 - (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

[End of Clause]

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J

LIST OF ATTACHMENTS

<u>ATTACHMENT</u>	<u>DESCRIPTION</u>
J.1	Statement of Work
J.2.	Billing Instructions - Cost Reimbursement Type Contract
J.3	Reporting Requirements Checklist - DOE Form 1332.1
J.4	U.S. DOL Wage Determination No. NV03009 06/13/03
J.5	List of Government Furnished Property
J.6	Annual Training Plan (TBN)
J.7	Annual Automated Data Processing Equipment (ADPE) Plan (TBN)
J.8	Small Business Subcontracting Plan
J.9	Performance Based Fee Plan

J.1 STATEMENT OF WORK (OCT 2002)
ENVIRONMENTAL ENGINEERING SERVICES

1. INTRODUCTION

2. SCOPE

- 2.1 Resources
- 2.2 Types of Work
- 2.3 Locations of Performance

3. APPLICABLE DOCUMENTS

4. WORK AREAS/PERFORMANCE REQUIREMENTS

- 4.1. Work Area A - Programmatic Planning, Documentation, and Management
- 4.2. Work Area B - Technical, Schedule, and Cost Baseline Development, Maintenance, Measurement, and Reporting
- 4.3. Work Area C - Regulatory and Policy Review
- 4.4. Work Area D - Completion of Assessment/Characterization Studies and Streamlined Approach for Environmental Restoration (SAFER) Activities
- 4.5. Work Area E - Database Management
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- 4.7. Work Area G - Remedial Actions at the NTS and Off-Site Locations
- 4.8. Work Area H - Public Involvement Activities

5. NOTES/ GUIDANCE

6. GLOSSARY

1. INTRODUCTION

For more than 40 years, the primary mission of the National Nuclear Security Administration, NSO was to conduct testing of nuclear and conventional explosives in conjunction with the research and development of nuclear tests. Most of this field testing was done at the Nevada Test Site (NTS) and included approximately 828 underground test sites, and 100 atmospheric test locations. In addition to radioisotopes associated with the tests, other contaminants included oils, solvents, gasoline, heavy metals such as lead, and unexploded ordnance. Approximately 1,375 square miles in size, the site is larger than the State of Rhode Island and is one of the largest restricted access areas in the nation. Field testing was also conducted on the Tonopah Test Range (TTR), the Nellis Air Force Range adjacent to the NTS, as well as at eight other sites in five states (Alaska, Colorado, Mississippi, Nevada and New Mexico).

The Environmental Management (EM) Program was established in 1989 at DOE offices around the country to address the environmental impacts associated with more than 50 years of nuclear weapons production in the United States. The NSO/ EM program encompasses environmental restoration, waste management, and technology development activities that have resulted from the historic NSO nuclear testing mission. NSO environmental restoration activities fall under the purview of the NSO Environmental Restoration Division. Waste management activities fall under the purview of the NSO Waste Management Division. Planning and Project Control functions fall under the purview of the EM Program Integration Team. Technology development and related activities fall under the purview of the Technology Division.

2. SCOPE

2.1. Resources

The contractor must provide, in accordance with the terms of this contract, all personnel, materials, supplies, equipment, services, facilities, and transportation (except as may be expressly set forth in this contract as furnished by the government) to perform environmental services required under this contract.

For work performed at the NTS, NSO will provide the Contractor with appropriate NTS office space to include utilities and phone service. The NSO will also provide the Contractor with GSA-supplied vehicles for local travel required under this program.

2.2. Types of Work

Assessment, characterization, and Streamlined Approach for Environmental Restoration (SAFER) environmental services will be provided in accordance with the Federal Facility Agreement and Consent Order (FFACO) between DOE, the state of Nevada and the Department of Defense, Defense Nuclear Agency (now the Defense Threat Reduction Agency). In addition, the required environmental services must be performed in compliance with the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), National Environmental Policy Act (NEPA), appropriate state regulations, Occupational Safety and Health Act, and DOE Orders and regulations. Subsurface remedial action activities at the off-site locations named above will also be provided in accordance with the citations listed above. The services are generally described as follows:

- (1) Programmatic planning, documentation, and management for EM activities
- (2) Technical, schedule, and cost baseline development, maintenance, measurement and reporting
- (3) Regulatory and policy review
- (4) Assessment/characterization studies and SAFER activities
- (5) Database management
- (6) Field services and laboratory analyses
- (7) Remedial actions at the NTS and off-site locations
- (8) Public involvement activities

2.3. Locations of Performance

Work may be performed at designated corrective action sites, or corrective action units at the NTS, Tonopah Test Range, parts of Nellis Air Force Range, and off-site locations in five states: Alaska, Colorado, Mississippi, Nevada, and New Mexico where underground nuclear testing or related activities have occurred. Travel to other sites in the DOE complex may also be required.

3. APPLICABLE DOCUMENTS

The following is a list of documents which may be applicable. Any or all may be revised or amended and the latest version of each applies:

- State and Federal Regulations
- Federal Facility Agreement and Consent Order (FFACO) - May 10, 1996
- Federal Facility Compliance Act - Compliance Order (FFCA) - March 27, 1996
- Resource Conservation Recovery Act Permit
- Mutual Consent Agreement for the Storage of Low-Level Land Disposal Restricted Mixed Waste - June 6, 1995
- DOE Orders and associated Manuals (See Section C.5)
- Memorandum of Understanding between NNSA/NV and the Defense Threat Reduction Agency, DE-GM08-98NV13478 - September 9, 2000
- Nevada, Mississippi, Alaska, and Aleutian/Pribiloff Island Agreements in Principle
- Letter of Agreement with US Fish and Wildlife Service, Maritime Refuge
- Memorandum of Understanding between NSO and the Air Warfare Center, Nellis Air Force Base (DE-GM08-98NV13467) - July 1998

4. WORK AREAS/PERFORMANCE REQUIREMENTS

The work effort under this contract will be evaluated on a performance-based incentive/award fee basis. Actual incentives will be specified and negotiated on a fiscal year basis as a result of negotiations with the regulators. For that portion that is evaluated using performance-based incentives, performance requirements in this contract will be expressed in the following manner.

Each performance requirement will contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

- Performance Objectives - A statement of the outcome or results expected in a specific task area. (These objectives will be identified in the basic contract for each task area).
- Performance Measures - The critical few characteristics or aspects of achieving the objective that will be monitored by the Government, e.g. those things that the Government will be gathering data about. Each objective may have one or more measures. (These measures will be dependent on the actual tasking issued by the Project Managers. The basic contract will identify a list of measures from which the Project Managers will select one or more measures for the specific tasks that are issued).
- Performance Expectations - The targeted level or range of levels of performance for each performance measure. The Project Managers will identify the expectations for each measure and incorporate them into the specific tasking.

4.1. Work Area A - Programmatic Planning, Documentation and Management

The Contractor will provide programmatic support to the NSO in planning and management for the NSO EM Program. Specific services include but are not limited to:

4.1.a. The Contractor will prepare comprehensive program, project management, safety, quality assurance plans, and required NEPA documentation, consistent with federal and state laws and regulations and DOE Orders and procedures.

4.1.b. The Contractor will maintain a comprehensive data base system for management of data, records, and reports consistent with the overall management systems utilized by the NSO.

4.1.c. The Contractor must provide planning and management services for the identification, grouping, and prioritization of corrective action sites and units.

4.2. Work Area B - Technical, Schedule, and Cost Baseline Development, Maintenance, Measurement, and Reporting

Specific services include but are not limited to:

4.2.a. The Contractor will prepare and maintain life cycle technical, cost, and schedule baselines (see C.6 Glossary) to assist NSO EM in managing to achieve programmatic, project, and subproject objectives. This includes providing 1) a full description of the scope of work for each work package, including technical and regulatory requirements, 2) detailed schedules for the associated activities, including start and finish dates, logic diagrams, critical path analyses, associated milestones, and potential risk factors, and 3) detailed cost estimates, including labor, hours, organizational burden, indirects, support costs, material, equipment, subcontracts, contingency, escalation, and risk factors.

4.2.b. The Contractor will prepare annual work authorization (currently defined as task planning sheets) as required to assist NSO in managing to achieve the EM objectives.

4.2.c. The Contractor will prepare, process, and implement scope, cost, schedule, and technical change control for life cycle and execution year baselines to assist the NSO in managing the EM objectives.

4.2.d. The Contractor will prepare regulatory agreement, performance measurement, and project tracking reports to assist NSO in tracking and measuring progress towards meeting established baselines and milestones.

4.3. Work Area C - Regulatory and Policy Review

Specific services include but are not limited to:

4.3.a. The Contractor will review and analyze new and current laws, regulatory requirements and policy guidance, and recommend strategy and policy alternatives to assist NSO in managing to achieve programmatic, project, and subproject objectives.

4.3.b. The Contractor will provide technical expertise to the NSO in the development, monitoring, and implementation of a variety of agreements with federal, state and local government agencies to assist in managing the NSO EM activities.

4.4. Work Area D - Completion of Assessment/Characterization Studies and SAFER Activities

This work area includes the completion of assessment/characterization studies and SAFER activities of Corrective Action Sites (CASs) or Corrective Action Units (CAUs) at the NTS, TTR, Nellis Air Force Range, and off-site locations. The contractor must complete all preliminary assessments, planning, technical studies, hazardous material handling, waste management, waste disposal, and coordination necessary to complete the assessment/characterization studies. The CAUs normally consist of varying characteristics and therefore, may require customized planning steps and requirements. Usually Site Specific Safety and Health Plans, Real Estate Operations Permits, and Quality Assurance Plans are required. The technical studies may include geophysical and hydrological investigations. Specific services include but are not limited to:

4.4.a. The Contractor must perform preliminary assessments (PAs) on certain CASs to provide refined information for cost estimating, prioritizing corrective action activities, and optimizing logical groupings of sites within CAUs. In addition, data generated from PA's provide the foundation for decisions that drive technical execution.

4.4.b. The Contractor must prepare draft and/or final documents to assess/characterize CAUs to adequately determine the extent, nature, and concentration of contamination to support assessment/characterization

studies. In addition to characterization/assessment activities, the Contractor must identify and provide a rationale for the selection of a recommended corrective action alternative for each CAS. Corrective action investigation plans (CAIPs), corrective action decision documents (CADDs), corrective action plans (CAPs), closure reports (CRs), and SAFER plans, or other plans as may be required, shall be prepared in accordance with the FFACO and applicable federal and state laws and regulations, as well as applicable DOE Orders and directives. Specific information and requirements may include: 1) historical data and site descriptions, 2) geophysical investigations, 3) data quality objectives, 4) health and safety plans, 5) number, types, and location of sampling sites for multi-media, statistically determined to reduce decision error, 6) quality assurance plans, 7) analytical requirements, and 8) waste management plans.

4.4.c. The Contractor must prepare permit documentation for CAUs in accordance with applicable federal and state regulations.

4.4.d. The Contractor must determine for each CAS and/or each CAU, as appropriate, the physiography, geology, and hydrology; define the nature, extent, and volume of any contamination, including their physical, chemical, and radiological constituents, as well as their concentration in affected soil or groundwater.

4.4.e. The Contractor will identify and appropriately implement new technologies, as requested for specific projects, which must comply with environmental laws and regulations.

4.4.f. The Contractor will perform data integration activities necessary to describe: 1) the physical characteristics of each CAS and/or CAU, 2) the nature and extent of contamination, and 3) the contaminant data and transport mechanism. Data integration activities will include the review of all existing literature applicable to assessment/characterization studies.

4.4.g. The Contractor will design and implement a groundwater assessment/characterization program leading to the development of a hydrologic model for the Underground Test Area CAUs based on existing and new data obtained through characterization activities.

4.4.h. The Contractor must verify and document for NSO EM approval that the planned assessment/characterization and SAFER activities are in compliance with environmental laws and regulations.

4.4.i. The Contractor will complete SAFER projects as determined by NSO.

4.4.j. The Contractor must manage all waste, such as hazardous, radioactive, and mixed waste generated by assessment/characterization and SAFER activities in accordance with applicable federal and state regulations and DOE Orders prior to its ultimate treatment and/or storage and/or disposal. For non-Nevada locations, the Contractor must manage waste in accordance with applicable federal and state regulations and DOE Orders. Transportation of hazardous materials on and off-site will be done in accordance with Department of Transportation regulations.

4.5. Work Area E - Data Base Management

Database services that must be provided include maintenance of existing HQ, NSO, programmatic, and project-specific databases; upgrades to existing databases to ensure systems remain responsive to changing requirements; development of new systems as required to meet changing policies and practices; configuration management of data associated with existing and new databases; maintenance of hardware associated with the systems; maintenance of software agreements associated with the systems; and purchase of equipment as required to ensure systems remain compliant and capable of meeting requirements.

Specific services include but are not limited to:

4.5.a. The Contractor must import, integrate, manage, and analyze government-furnished and contractor-generated data related to NSO EM activities, legal obligations, and business practices.

4.5.b. The Contractor must maintain the existing programmatic database management programs, including programs that deal with EM baselines, regulatory (including FFACO), and technical data including geologic, hydrologic, geophysical, meteorological data.

4.5.c. The Contractor must provide information to respond to a variety of data calls.

4.6. Work Area F - Field Characterization/Remediation and Laboratory Analysis

Specific services include but are not limited to:

4.6.a. The contractor must provide qualified personnel and accurate field screening techniques to aid the characterization/remediation process.

4.6.b. The contractor must collect samples of sufficient quality and quantity to be legally defensible, and to meet project Data Quality Objectives and NSO requirements for compliance with the FFACO, and other state requirements.

4.6.c. The contractor must provide a sample validation group qualified to validate characterization/remediation data, and verify that it meets the project data quality objectives, and NSO requirements for compliance with the FFACO, and other state requirements.

4.6.d. The contractor must participate in the EM Consolidated Audit Program (EMCAP), to include using EMCAP audited labs, as well as providing auditors to the program. The contractor must have several laboratories on call to provide analysis for large sample volumes and specialty analyses.

4.7. Work Area G - Remedial Actions at the NTS and Off-Site Locations

4.7.a. The Contractor will prepare appropriate plans for conducting surface and subsurface remedial actions and closure reports at the NTS and NSO administered sites in Alaska, Colorado, Mississippi, Nevada and New Mexico. These processes may vary in approach due to the differences in individual state regulations and policies.

4.8. Work Area H - Public Involvement Activities

Specific services that may be required include providing coordination and support as follows:

4.8.a. The Contractor must assist NSO/EM by providing integration, coordination, support, and implementation of EM public involvement activities.

4.8.b. The Contractor must develop and maintain NSO/EM communication products such as the Public Involvement Plan, videos, etc.

5. NOTES/GUIDANCE

LIST OF APPLICABLE DOE AND NNSA/Nevada Site Office (NV) DIRECTIVES

DIRECTIVE NUMBER	SUBJECT/TITLE OF DIRECTIVES	IS IT DOWN TO SUBCONTRACTOR (YES OR NO)
10 CFR 850	Chronic Beryllium Disease Prevention Program	Y
NV O 124.X	Planning and Budget Prioritization of Work	N
DOE O 151.1A	Comprehensive Emergency Management System	N
NV O 151.1	Comprehensive Emergency Management System	N
DOE O 200.1	Information Management Program	N
DOE O 205.1	DOE Cyber Security Management Program	N
NV M 210.X	Contractor Performance Administration	N
NV M 220.XB	NSO Oversight Management System	Y

DIRECTIVE NUMBER	SUBJECT/TITLE OF DIRECTIVES	FLOWDOWN TO SUPPORT ACTOR (YES OR NO)
DOE O 221.1	Reporting Fraud, Waste, and Abuse to the Office of Inspector General	Y
DOE O 221.2	Cooperation with the Office of Inspector General	N
DOE O 225.1A	Accident Investigations	Y
NV O 230.XA	NNSA/NV Lessons Learned Program	Y
DOE O 231.1A	Environment, Safety and Health Reporting	Y
DOE M 231.1-1, Chg 2	Environment, Safety, and Health Reporting Manual	Y
DOE O 232.1A, Chg 1	Occurrence Reporting and Processing of Operations Information	Y
DOE M 232.1-2	Occurrence Reporting and Processing of Operations Information Manual	Y
NV N 232.XA	Event Notifications	Y
DOE O 241.1A	Scientific and Technical Information Management	N
NV M 251.1-1B	NSO Directives System	N
DOE O 252.1	Technical Standards Program	N
DOE O 350.1, Chg 1	Contractor Human Resource Management Programs	N
NV M 410.XA	Task Plan and Change Control Process	N
NV M 412.XA	Project Screening and Location Approval System	N
NV M 412.X1C	Real Estate/Operations Permit	N
NV O 412.X3A	Work Control	10 CFR 850
NV M 412.X1C	REOPS	N
NV M 412.X2	Readiness Review	Y
NV O 412.X3A	Work Control	Y
DOE O 412.1	Work Authorization System	N
NV O 413.X	Project Management Principles and Practices	N
DOE O 413.3	Program and Project Management for the Acquisition of Capital Assets	N
DOE O 414.1A, Chg 1	Quality Assurance	Y
NV M 421.X	Nuclear Facility Safety Management	
DOE O 430.1B	Life Cycle Asset Management	N
DOE O 435.1, Chg. 1	Radioactive Waste Management	Y
NV M 435.1-1	Radioactive Waste Management Manual	Y
DOE O 440.1A	Worker Protection Management for DOE Federal and Contractor Employees	Y

DIRECTIVE NUMBER	SUBJECT/TITLE OF DIRECTIVES	FLOWDOWN TO SUBCONTRACTOR (YES OR NO)
NV O 440.1	Worker Protection Management for DOE Federal and Contractor Employees	Y
DOE O 440.2B	Aviation Management and Safety	Y
DOE O 442.1A	Department of Energy Employee Concerns Program	Y
DOE O 450.1	Environmental Protection Program	Y
NV O 450.X	Nevada Test Site Access and Area Control	Y
NV M 450.XA, Chg 1	Authorization and Activity Agreements for Facilities and Operations	N
NV O 450.X1	Protection of Cultural Resources and Endangered Species	Y
NV P 450.X1	Compliance with RCRA	Y
NV P 450.4B	Safety Management System Policy	Y
NV O 450.4	Safety Management System Maintenance	N
NV O 451.1	National Environmental Policy Act Compliance Program	N
DOE O 451.1B, Chg 1	National Environmental Policy Act Compliance Program	N
DOE O 460.1B CRD	Packaging and Transportation Safety	Y
DOE O 460.2 CRD, Chg 1	Departmental Materials Transportation and Packaging Management	Y
DOE M 460.2-1 CRD	Radioactive Material Transportation Practices Manual	Y
DOE O 470.1, Chg 1	Safeguards and Security Program	Y
DOE O 470.2B	Security and Emergency Management Independent Oversight and Performance Assurance Program	Y
DOE O 471.1A	Identification and Protection of Unclassified Controlled Nuclear Information	Y
DOE M 471.1-1	Identification and Protection of Unclassified Controlled Nuclear Information Manual	Y
DOE O 471.2A	Information Security Program	Y
DOE O 471.3	Identifying and Protecting Official Use Only Information	Y
DOE M 471.3-1	Manual for Identifying and Protecting Official Use Only Information	Y
DOE O 472.1C	Personnel Security Activities	Y
DOE M 472.1-1B	Personnel Security Program Manual	Y
NV O 481.1, Chg 1	Work for Others (non-Department of Energy Funded Work)	N
DOE O 534.1B	Accounting	N

DIRECTIVE NUMBER	SUBJECT/TITLE OF DIRECTIVES	FLOWDOWN TO SUBCONTRACTOR (YES OR NO)
DOE O 551.1B	Official Foreign Travel	N
NV O 1300.2A	Department of Energy Technical Standards Program	N
DOE O 1340.1B	Management of Public Communications Publications and Scientific, Technical, and Engineering Publications	Y
DOE O 1350.1	Audiovisual and Exhibits Management	Y
DOE O 5400.5, Chg 2	Radiation Protection of the Public and the Environment	Y
DOE O 5480.4, Chg 4	Environmental Protection, Safety, and Health Protection Standards	Y
DOE O 5560.1A	Priorities and Allocations Program	Y
DOE O 5610.2, Chg 1	Control of Weapon Data	Y
NNSA Policy Ltr NAP-14.1	NNSA Cyber Security Program	N
NNSA Policy Ltr NAP-14.2	Baseline Cyber Security Requirements	N
NNSA Policy Ltr NAP-14.3	NNSA Protection Profile and Security Target Requirements	N
NNSA Policy Ltr NAP-14.4	Open Public Unrestricted Access Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.5	Unclassified Protected Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.6	Unclassified Mandatory Protection Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.7	Confidential Non-Nuclear Weapons Data Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.8	Secret Restricted Non-Nuclear Weapons Data Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.9	Confidential Restricted Data, Sigmas 1 Through 13 Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.10	Secret Restricted Data, Sigmas 1 Through 13 Information Group Protection Profile	N
NNSA Policy Ltr NAP-14.11	Secret Restricted Data Sigmas 14 and 15 Information Group Protection Profile	N

O = Order M = Manual G = Guide P = Policy NV = Nevada Site Office

6. GLOSSARY

ALARA - As low as reasonably achievable

CADD - Corrective Action Decision Document: A document that provides the corrective action that is selected as the result of investigation activities and the rationale for its selection. The rationale consists of an analysis of the possible alternatives and may reflect a decision ranging from no action to clean closure.

CAIP - Corrective Action Investigation Plan: A document that provides or references all the specific information for planning investigation activities associated with CAUs. A CAIP may reference information in the optional CAU work plan or other applicable documents. If a CAU work plan is not developed, then the CAIP must include or reference all the management, technical, quality assurance, health and safety, public involvement, field sampling, and waste management information needed to conduct the investigations in compliance with established procedures and protocols.

CAP - Corrective Action Plan: A document that provides the plan for implementing the selected corrective action alternative. This plan shall contain a detailed description of the proposed actions that will be taken to achieve the degree of containment set forth in the NDEP-approved CADD.

CAS - Corrective action site

CAU - Corrective Action Unit, may be comprised of one or many Corrective Action Sites, each identified in the FFACO, that must be characterized and remediated.

CERCLA - Comprehensive Environment Response, Compensation and Liability Act

Cost Baseline - detailed cost estimates, including labor, hours, organization burden, indirect costs, support costs, material, equipment, subcontracts, contingency, escalation, and risk factors.

CR - Closure Report: A document that states that the completed corrective action was conducted in accordance with the approved CAP and provides to NDEP all necessary support data to confirm that the appropriate corrective action took place.

DOE - U. S. Department of Energy

EM - Environmental Management

EMCAP - EM Consolidated Audit Program

EMPCS - Environmental Management Project Control System

ERD - Environmental Restoration Division

FFACO - Federal Facility Agreement and Consent Order: A legally binding agreement signed by the DOE, the state of Nevada, and the Department of Defense. The FFACO provides the requirements under which the Environmental Restoration activities of NSO are accomplished. It is primarily a RCRA oriented process.

IAW - In accordance with

NR - Nellis Range

NEPA - National Environmental Policy Act

NNSA - National Nuclear Security Administration

NSO - Nevada Site Office

NTS - Nevada Test Site

PA - Preliminary Assessment

Project - Defined for the purposes of this solicitation as a finite EM work scope based on the source of contamination or waste type.

Project Managers - An NSO employee, formally designated by an NSO Assistant Manager or Division/Office Director who is assigned program/project management responsibilities for a defined work scope. The Program/Project Manager is the single point of contact for the work scope and is accountable for ensuring an adequately defined work scope, cost, schedule, and for monitoring contractor performance. The Program/Project manager is responsible for ensuring adequate planning and organizing, directing, controlling, and reporting all activities within the assigned scope of work to provide a defined product(s) in a safe manner.

QAP - Quality Assurance Plan

RCRA - Resource Conservation and Recovery Act

REOP - Real Estate Operations Permit

SAFER - Streamlined Approach for Environmental Restoration Plan: A document that provides a plan for initiating and completing correctives actions at Corrective Action Units (CAU) where enough information exists to predict the appropriate corrective action before completing a corrective action investigation (CAI). The plan will incorporate the essential elements of the Corrective Action Investigation Plan (CAIP), the Corrective Action Decision Document (CADD), and the Corrective Action Plan (CAP) to allow work to proceed directly from the CAI to the corrective action.

Schedule baseline - Detailed schedules for the associated activities, including start and finish date, logic diagrams, critical path analysis, associated milestones, and potential risk factors

SSHASP - Site Specific Health and Safety Plan

Subproject - Defined for the purposes of this solicitation as a finite work scope within a defined EM project. An example may be a specific off-site location or a specific CAU within the Industrial Sites Project.

Task Plans - Annual Work Authorization documents

Technical baseline - full description of scope of work for each work package, including technical and regulatory components

TTR - Tonopah Test Range

UGTA - Underground Test Area, refers to the UGTA Project

Work Authorization Documents - Task Plans that outline contractor work requirements for a specified time period.